HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.234 of 2007

Between:

M/s. Hanuman Traders, A Propriety Concern,
Wholesale Pulses Dealers, D.No.6-3-28,
Saravari Street, Peddapuram, E.G Dist.,
Rep., by its Proprietor Vemula Hanuman

... Appellant

And

The District Collector (Civil Supplied),
East Godavari at Kakinada

... Respondent

::JUDGMENT::

Counsel for the appellant : Shri N. Siva Reddy

Counsel for the respondent : Government Pleader for Civil Supplies

March 30, 2007

Per G.S. Singhvi, C.J.

This is an appeal for setting aside order dated 6-3-2007 passed by the learned Single Judge in Writ Petition No. 4336 of 2007, whereby he declined the appellant's prayer for quashing communication dated 20-2-2007 issued by Collector, East Godavari District, Kakinada (the respondent herein) for furnishing bank guarantee of Rs.31,18,425/-

The appellant is a dealer registered under the Andhra Pradesh

Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982. It is also registered under the Andhra Pradesh General Sales Tax Act, 1957. On 15-2-2007, the appellant's premises were inspected by the officers of Vigilance and Enforcement Wing of the Civil Supplies Department. This resulted in seizure of the stocks and initiation of proceedings against the appellant under Section 6-A of the Essential Commodities Act, 1955 (for short, 'the Act'). After two days, the appellant's representative filed an application for release of the seized commodity. Thereupon, the respondent issued communication dated 20-2-2007 requiring the appellant to furnish bank guarantee of Rs.31,18,425/-.

The learned Single Judge dismissed the writ petition by recording the following observations.

> "In view of the fact that a case under Section 6-A of the Act has been initiated against the petitioner for violation of the terms of the license, there is a potentiality of the entire seized stocks being confiscated, depending upon the assessment of the record of the proceedings. It is premature to assume that the petitioner's defence would pass muster and the case initiated against him under Section 6-A of the Act would be dismissed. The respondent has exercised the discretion within the spectrum of his jurisdiction and has directed furnishing of bank guarantee for the full value of the seized stocks. This court discerns no perversity in the order impugned. This Court is not constituted as an appellate authority on the discretion of the respondent."

On 16-3-2007, we had, while issuing notice for final disposal of the appeal, directed that counter-affidavit be filed on behalf of the respondent.

In compliance of the Court's order, Shri M.Subramanyam, who is presently working as Collector, East Godavari District filed affidavit dated 21-3-2007. In para 1 of his affidavit, Shri M.Subramanyam has

given the details of the stock seized from the godowns of the appellant and averred that the latter has violated the provisions of the Act necessitating seizure of the stocks. In paragraphs 3 and 4 of his affidavit, Shri M.Subramanyam has averred as under:

> "3. In reply to para 4, it is submitted that it is a fact that the appellant has filed a petition before the Collector, East Godavari for release of the stocks on furnishing Bank Guarantee. Orders were given vide Ref.No.V3/CS/153/2007 dated 20-2-2007 directing the appellant to furnish the Bank guarantee for Rs.31,18,425/- which is equivalent to the value of the seized stock. But, the appellant did not furnish bank guarantee, even after lapse of 10 days. Therefore, the Collector has passed interim disposal orders on 18-3-2007 of the seized stock in terms of 6-A(2) of the E.C.Act, 1955 to bring the seized commodities into Public Distribution System and for making them available to the general public/consumers at a reasonable and fair prices which is expedient in public interest.
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> 4. In reply to para 5, it is submitted that the appellant in his application dated17-10-2006 in Form 'A' has mentioned (3) godowns i.e. D.No.6-18-2, 6-18-2A and
> 6-4-19. But the Enquiry Officer in his report dated
> 21-11-2006 has informed that the applicant did not produce relevant documents pertaining to godown D.No.6-18-2A and therefore he did not recommend to include this godown in the Licence. Basing on this report, Form 'B' licence was issued to the appellant on 22-12-2006 mentioning (2) godowns only i.e D.No.6-18-2 and 6-4-19. The appellant in his Form 'C' returns has mentioned the godown
> D.No.6-18-2A also along with other (2) godowns. But in the returns furnished the stocks were shown below 1,000 quintals. The appellant knows that the D.No.6-18-2A is an unauthorised godown and he was not given permission for inclusion of this godown in the licence. A 6-A case was filed against him on 15-2-2007. As godown No.6-18-2A was not included in Form 'B' Licence, the godown is to be considered as unauthorised godown. It is submitted that it is not correct to state that in Form 'C' returns the details of stocks stored in C.W.C godown was

mentioned. It was reported in 6-A petition that the sales transactions were recorded in the registers by the appellant up to 13-2-2007 and as such there are no sales on the day of inspection i.e. 15-2-2007. Therefore the contention of the appellant that the inspecting officials have not taken into account the transactions of sales held on the day of inspection is far from truth. After physical verification of the stocks it was found that the appellant is in possession of 1147.75 quintals of pulses i.e over and above the permissible limit of 1,000 quintal as prescribed under the provision of Andhra Pradesh Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982. The value of the seized stocks were calculated by the inspecting team consisting of Civil Supplies Deputy Tahsildar, Circle Inspector, Sub-Inspector and D.C.T.O. of Vigilance and Enforcement Department, taking into consideration the actual value of the seized stocks and arrived at Rs.31,18,425/-. The appellant himself has admitted this fact in his panchanama given before the inspection team. The appellant has also filed an application before the Collector on 17-2-2007 himself making a request to release the stocks on furnishing bank guarantee for Rs.31,18,425/-.

It is submitted that the contention of the petitioner/appellant that omission of premises No.6-18-2A is inadvertent by the authorities is not correct. As already submitted earlier, since the petitioner/appellant did not produce the necessary documents to establish his ownership or authorized lease in his favour for the said premises the licence was not issued for said premises. Since the other premises 6-18-2 and 6-4-19 were covered by required documents, only those were included in the licence, under which the petitioner/appellant is authorized to conduct his trading activity. Further, the petitioner never complained or made any application to the licensing authority about the non-inclusion of said premises. It is further submitted that the contention of the petitioner/appellant that the value of seized stock has been inflated by the inspection officials is untenable. The authorities have taken the prevailing market value for arriving at the figure, while conducting the panchanama at the time of seizure of stock. The appellant himself approached the respondent to

release the stock on furnishing security. His request was considered by authority and orders were passed on 20.2.2007 informing petitioner/appellant to furnish bank guarantee for the value of seized stock in order to release the stock. The appellant cannot complain about any injustice. Since 6-A proceedings are pending, the seized commodities cannot be released without properly being secured. Hence, furnishing of bank guarantee for the value is just and reasonable. Therefore, it is prayed that this Hon'ble Court may be pleased to consider the above facts and may be pleased to dismiss the W.A No.234/2007."

Learned counsel for the appellant says that he is not in a position to make any statement regarding order dated 18-3-2007 passed by the respondent.

In view of the above, we hold that the cause on which the appellant had filed the writ petition does not survive and the appeal is liable to be disposed of as infructuous. Ordered accordingly. However, liberty is given to the appellant to avail appropriate legal remedy against order dated
18-3-2007.

Learned counsel for the appellant says that copy of order dated 18-3-2007 has not been served upon his client. Therefore, we direct that if the appellant appears before District Collector (Civil Supplies), East Godavari at Kakinada on 31-3-2007 at
11.00 AM, then attested copy of order dated 18-3-2007 passed by the officer concerned under Section 6-A(2) of the 1955 Act must be made available to him without delay.

As a sequel to disposal of the appeal, WAMP No. 441 of 2007 filed by the appellant for interim relief is also disposed of as infructuous.

G.S. SINGHVI, CJ

March 30, 2007

C.V. NAGARJUNA REDDY, J

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Note: The Court Officer is directed to give attested copies of this order to the counsel for the parties.

(By Order)

svs

PS to HCJ